

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

v.

Case No. 94-81259-5

DARRELL ATKINS,

Defendant.

**OPINION AND ORDER DECLINING TO ISSUE A MODIFICATION OF SENTENCE
PURSUANT TO 18 U.S.C. § 3582(C)(2)**

The matter is before the court on a determination for a possible reduction of sentence pursuant to 18 U.S.C. § 3582(c)(2). The court appointed the Federal Defender's Office "to determine eligibility, confer with the Probation Department and the U.S. Attorney's Office, and gather the pertinent information to assist the court in expeditiously resolving any pending or intended 18 U.S.C. § 3582(c) motions." (1/26/09 Order at 1.) Although Defendant's counsel initially intimated that Defendant was eligible for a reduction, (8/4/09 Resp.), counsel has since filed a supplemental brief confirming Defendant Atkins's ineligibility for a modification due to his career offender status, (8/17/09 Supp. Br.). The Sixth Circuit has held that "a district court may not grant a motion for a reduction in sentence premised upon Amendment 706 if the defendant seeking the reduction was originally sentenced as a career offender." *United States v. Perdue*, 572 F.3d 288, 292 (6th Cir. 2009) (citing *United States v. Mateo*, 560 F.3d 152, 155 (3d Cir. 2009); *United States v. Forman*, 553 F.3d 585, 589 (7th Cir. 2009); *United States v. Caraballo*, 552 F.3d 6, 9 (1st Cir. 2008); *United States v. Sharkey*, 543 F.3d

1236, 1239 (10th Cir. 2008)). The court has reviewed the August 17, 2009, supplemental brief in conjunction with the earlier-filed briefs in this case and concludes that, due to his status as a career offender, Defendant is ineligible for a modification.

Accordingly,

IT IS ORDERED that the court DECLINES to modify Defendant's sentence pursuant to 18 U.S.C. § 3582(c), and the matter is deemed closed.

s/Robert H. Cleland
ROBERT H. CLELAND
UNITED STATES DISTRICT JUDGE

Dated: October 9, 2009

I hereby certify that a copy of the foregoing document was mailed to counsel of record on this date, October 9, 2009, by electronic and/or ordinary mail.

s/Lisa Wagner
Case Manager and Deputy Clerk
(313) 234-5522